

**MINUTES OF THE
PLANNING COMMISSION MEETING
May 24, 2023**

The Imperial County Planning Commission convened a Meeting on Wednesday, May 24, 2023 at 9:00 a.m. in the Board of Supervisors Chambers, El Centro, California.

Staff present: Director, Jim Minnick, Assistant Director, Michael Abraham / Planning Division Manager, Diana Robinson, Planner I, Luis Valenzuela, Planner II Evelia Jimenez, Planner II Derek Newland, Planner IV David Black / Clerks- Valerie Grijalva & Melina Rizo.

Chairman Rudy Schaffner called meeting to order at 9:00 a.m.

I. **Roll Call: Commissioners present:** Schaffner, Kalin, Roben, Cabañas, Bergh, Medina, and Wright

II. **Pledge of Allegiance:**

III. **Public Hearings**

1. **Approval of Minutes:** Chairman Schaffner entertained a motion to approve the Planning Commission Minutes for the **March 08, 2023** meeting as submitted by staff; **Vice Chairman Kalin** made motion to approve minutes seconded by **Commissioner Cabanas** and carried on the affirmative vote by the Commissioners present Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes) Wright (yes) to approve minutes as they stand.

2. Consideration of **Time Extension #23-0004/Conditional Use Permit #1095-93** as submitted by Cal Grade, Inc. who is requesting a new 15-year term under the previously approved Conditional Use Permit #1095-93 for existing sand and gravel pit and water well. The permit allowed the operation of a sand and gravel pit and drilling of a water well. The project site is located east of Bombay Beach and south of the Coachella Canal, on property identified as Assessor Parcel Number 003-360-018-001; further described as the N ½ OF SW ¼ of Section 21 in Township 9 S., Range 13 E., (Supervisory District #4), [Luis Valenzuela, Planner I at 442-265-1736, extension 1749 or by email at luisvalenzuela@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced **Luis Valenzuela**, Planner I, to read the project into the record.

Luis Valenzuela, Planner I; Read the PowerPoint Presentation of the project into the record.

Chairman Schaffner; Asked if there was a representative for the project to approach the podium.

Karen Blue, Applicant; Introduced herself.

Chairman Schaffner; Asked if she had any questions or comments regarding the project, and if she read and agreed with everything.

Karen Blue, Applicant; Stated that they read and agreed with everything and had no further questions.

Chairman Schaffner; Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Vice-chairman Kalin: Made a motion in favor of project seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes).

Jim Minnick, Director; Stated **Agenda Item #2** stands approved by this Commission. In which the applicant or any member from the public want to appeal must done by filing the appropriate appeal in the next ten (10) days.

Jim Minnick, Director; Before we proceed with Agenda item #3, a little housekeeping. Some of you may or may not know that we have a new Supervisor, Mr. John Hawk, District 5 and one of his commissioners is no longer with us; Tony Gallegos. So, we are currently at nine (9) commissioners; affirmative vote would be five (5) commissioners. So, I know we have seven (7) on the dais today, but at this point forward until Mr. Hawk is able to appoint a new commissioner on board, we will be running a nine (9) commission shift with a five (5) affirmative vote. Thank you.

3. Consideration of **Variance #22-0004** as submitted by Steven Eugene Hendrickson who is requesting a variance to increase setback encroachment into rear and side yard setback by less than five (5) feet. The project site is located at 61 W Palo Verde Rd Ocotillo, CA, 92259, on property identified as Assessor Parcel Number 033-306-004-000; Lot 46, Townsite of Ocotillo Unit No. 1, in the office of the County of Imperial, State of California, according to Map No. 340 on file in the office of the County Recorder of Imperial County (Supervisory District #2), [Evelia Jimenez, Planner II at (442) 265-1736, Extension 1747 or by email at ejimenez@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced **Evelia Jimenez**, Planner II, to read the project into the record.

Evelia Jimenez, Planner II; Read the PowerPoint Presentation of the project into the record.

Chairman Schaffner; Asked if there was a representative for the project to approach the podium.

Cecilia Vogel, Representative; Introduced herself.

Chairman Schaffner; Asked if he had any questions or comments regarding the project, and if she read and agreed with everything.

Cecilia Vogel, Representative; Stated that she read and agreed with the project report.

Chairman Schaffner; I have a question, I assume you are spending a lot of time and money asking for this variance, sliding that thing a little bit is not an option?

Cecilia Vogel, Representative; It is on concrete; it was there when they purchased the property and it is very solid. I mean you can see the concrete coming up about eight (8) inches yet I do not know how deep it is. But sliding it, I mean there is a house in front if it. So to get something in to pull it out, is nearly impossible.

Chairman Schaffner; And the reason for having these setbacks is typically for fire separation?

Jim Minnick, Director; Yes.

Chairman Schaffner; So you kind of got that by the building being there? Almost like building a block wall?

Cecilia Vogel, Representative; It is a steel building.

Chairman Schaffner; Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Commissioner Roben; I have a question Jim, that is a twenty-five (25) foot rear yard setback or a five (5) foot?

Jim Minnick, Director; Five (5) foot for accessory structures. An accessory structure ideally, each side of your side yard and rear side would be five (5) and your neighbor would be five (5).

Commissioner Roben: Ok, that is a pretty standard ratio. It looks like a lot in that vicinity has the same problem. It looks like there are a lot of structures placed really close to the fence lines on that vicinity map.

Jim Minnick, Director; The primary dwelling in a residential zone needs to be twenty-five (25) feet from the back property line. And then to complicated further in the future, accessory dwelling units by state code now can be four (4) feet from rear and side yards. State Law now mandates that all jurisdictions allow accessory dwelling units whether attached or detached to be four (4) feet from the property line. Laws are changing.

Commissioner Bergh; I was wondering, why did it take thirteen (13) years to reach this point. Did the zoning change?

Jim Minnick, Director; No, we weren't aware of the structure.

Commissioner Bergh; But there is one adjacent to it also.

Jim Minnick, Director; Again, some of these structures have been around for a long time and some of them are built without permits. I believe your client came in for a new building permit, which was where we discovered that there was an issue with the property and we required him to either remove it or get a variance and that is why they are here.

Steven Hendrickson, Applicant; Introduced himself and commented, I just wanted to make you know that we are doing extensive remodel on the house, trying to improve the neighborhood, make the area around there look nice. The building is a really sturdy structure; it is on concrete as Cecilia had talked about. And you know, it is a useful part of the property, and I would really appreciate it if you guys would consider it to be approved.

Chairman Schaffner; I guess on the first hand, it would be getting it under compliance.

Jim Minnick, Director; Yes, sir.

Steven Hendrickson, Applicant; Anything that is needed to get it under compliance, I am willing to do.

Chairman Schaffner; And you don't have room to slide it away from the fence.

Steven Hendrickson, Applicant; No, the concrete slab is probably 18 inches; it was put in there professionally, it is not just a building someone put in. There was a company that must have come in and put it the slab, put the building in and secured it on the side with metal.

Commissioner Roben; So, it is not a container. It is a structure not a container.

Chairman Schaffner; Ohh, ok you are not going to slide that.

Chairman Schaffner; I entertain a motion.

Vice-chairman Kalin; It is not usual that Variances like this get approved but, I will make a motion in favor of project seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes).

Jim Minnick, Director; Stated **Agenda Item #3** stands approved by this Commission. In which the applicant or any member from the public want to appeal must done by filing the appropriate appeal in the next ten (10) days.

4. Consideration of **Variance #23-0001** as submitted by Brianna Scherer who is requesting a variance to increase setback encroachment into rear and side yard setback by less than five (5) feet. The project site is located at 65 W Palo Verde Rd, Ocotillo, CA, 92259, on property identified as Assessor Parcel Number 033-

306-003-000; Lot 45, Townsite of Ocotillo Unit No. 1, in the office of the County of Imperial, State of California, according to Map No. 340 on file in the office of the County Recorder of Imperial County (Supervisory District #2), [Evelia Jimenez, Planner II at (442) 265-1736, Extension 1747 or by email at ejimenez@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced **Evelia Jimenez**, Planner II, to read the project into the record.

Evelia Jimenez, Planner II; Read the PowerPoint Presentation of the project into the record.

Cecilia Vogel, Representative; Introduced herself and owner Briana Scherer.

Briana Scherer, Applicant; Those containers are right next to the building you just talked about and approved for Steven Hendrickson, and I really would not like to move that forty (40) foot and twenty (20) foot container. You guys know those lots out there are only one hundred (100) foot by one hundred (100) foot, so I try to have as much yard space as possible. Just like Steven, I have improved the property there. Cleaned it all up, I brought in seventy-five (75) tons worth of gravel a long time ago and improved the place, so.

Chairman Schaffner; And how long have you owned that property for?

Briana Scherer, Applicant; I bought it from the property trust from my great grandparents. I used to go down there as a kid. They owned it; So I have had it now for ten (10) years.

Chairman Schaffner; Who put the containers there?

Briana Scherer, Applicant; I did, ten (10) years ago. I don't believe there was a container set back rule that I knew about back then.

Chairman Schaffner; Are these on a slab?

Briana Scherer, Applicant; Yes they are, on a solid slab. And I have an awning that helps keep the heat out of them in the summer time.

Commissioner Bergh; What are these being used for?

Briana Scherer, Applicant; I store my recreation vehicles in there.

Commissioner Bergh; Your personal?

Briana Scherer, Applicant; My personal recreation vehicles, yes. So that I don't have to haul them up and down the hill.

Chairman Schaffner; Asked if she had read the entire project and agreed with everything in it.

Briana Scherer, Applicant; Yes, I do.

Chairman Schaffner; Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Commissioner Roben; Jim, do you have to permit a container install on a property?

Jim Minnick, Director; Yes, what we are looking for when you install a container is to make sure that it is leveled, and that it is on a stable surface. So, it could be slab, it could be a railroad ties, it could be elevated and we also consider a cargo container in the residential zone as accessory dwellings so traditionally must meet the same set back requirements.

Commissioner Roben; So, it has to be five (5) feet on both sides and rear.

Jim Minnick, Director; Yes.

Commissioner Bergh; Has the building department inspected the foundation?

Jim Minnick, Director; I don't think so.

Commissioner Bergh; So, you have no idea what is out there?

Jim Minnick, Director; At this time, no.

Commissioner Bergh; Bunch of cowboys.

Jim Minnick, Director; Well, with all due respect we have more than a million parcels in the county and we can't track every single one of them. But when we get a building permit, we go out there and take a look at stuff, and see things that are amiss we draw that attention to the applicant and hold that permit up until we resolve the issue. In this case, the resolution request from the applicant is to see if a variance can be approved to retain the structure that they have. If that is the case, we will go out there and double check it was installed properly, and require them to get a permit for the installation that is already there.

Commissioner Roben; Is there a roof structure on containers?

Briana Scherer, Applicant; Just an awning.

Jim Minnick, Director; All that we will have to be checked on the building side. There is no point in doing that if the Planning Commission doesn't allow it. So we will get to those steps post phase should this be approved.

Commissioner Medina; How far is it out of compliance?

Briana Scherer, Applicant; two (2) feet.

Commissioner Cabanas; Jim, is there any specific use for those containers? Or may those be used for whatever the applicant wants.

Jim Minnick, Director; Cargo containers in a residential zone are considered accessory dwellings so, it is nothing different as if you would buy a shed from home depot. We do not regulate what is put inside.

Vice-Chairman Kalin; So on the long side, what is the set back there?

Jim Minnick, Director; On the side yard? It is five (5) feet on the side and rear.

Vice-Chairman Kalin; Yeah, but currently how much is it, with the way the containers sit?

Cecilia Vogel, Representative; She is five (5) feet but the stairs, so two (2) feet.

Commissioner Bergh; There are some stairs on one side.

Vice-Chairman Kalin; How wide are the stairs?

Commissioner Roben; Stairs don't count though, right? It is structure not, stairs.

Jim Minnick, Director; We are more concerned about the structure.

Vice-Chairman Kalin; Okay, so from the stairway to the adjoining property, what is that distance?

Cecilia Vogel, Representative; two (2) feet.

Vice-Chairman Kalin; And the requirement is five (5)?

Jim Minnick, Director; The structure requirement is five (5).

Commissioner Roben; They are in compliance on one side, it is only the other side that has the issue. The rear side.

Vice-Chairman Kalin; Right.

Commissioner Wright; So is the container actually affixed to the concrete?

Briana Scherer, Applicant; No. I did not affix them to the concrete.

Jim Minnick, Director; Usually they are not. Even if I were to have you put them on rail road ties, we don't necessarily need you drill through your floor / container, to affix it. What we are really more concerned about the cargo containers is that they are leveled to the extent that their door don't rack, because the last thing we want is that you have somebody in there and because it wasn't set straight, someone shuts the door and they can't open the door back up. So, that is really where our concern is; but we have tons of cargo containers both on residential and non-residential zones so all we are really looking for is the basic that they are safe to be opened and closed.

Briana Scherer, Applicant; And I have been going in and out of it for ten years now.

Commissioner Roben; Could you put the map back up. So, there are two containers there, and they are both two (2) feet too close.

Briana Scherer, Applicant; Yes, I leveled the twenty (20) footer with the back of the forty (40) footer.

Commissioner Bergh; At this point the container and the other piece of property, it abuts at them?

Jim Minnick, Director; I thought the other one was at the West side.

Briana Scherer, Applicant; Yeah, no, Steven's is on the far other end.

Commissioner Medina; Where do the stairs go?

Briana Scherer, Applicant; They go up to a skypod, so that I could watch the stars.

Jim Minnick, Director; A deck. That will have to be looked at as well, assuming that the containers are allowed to stay. All of that will be checked from a building stand point.

Commissioner Cabanas; So if this variance is granted, you guys will still go out there and check everything?

Jim Minnick, Director; Absolutely.

Commissioner Roben; And if we don't grant it you guys will go out there and check it too right?

Jim Minnick, Director; If not granted, then they would have to remove everything and we will confirm that it has all been removed.

Commissioner Roben; But they could move it to the correct location too, and then you would go back and check it again.

Briana Scherer, Applicant; I know, either way you guys will come out and look at it. But I would prefer to not have to move it as it was quite an ordeal ten (10) years ago to put those in.

Jim Minnick, Director; I will say this, we chase properties and property owners around the valley all the time. Today is an example of two property owners that are trying do it right. So, regardless of what you vote, I wanted for you to know that. We appreciate at least that they are trying to do the right thing.

Chairman Schaffner; Ma'am are you generally a nice person?

Briana Scherer, Applicant; Yes, as long as you don't make me have to change them. I consider that place my little slice of heaven. I don't have internet down there, so it is where I go to chill out and I have great memories of the place when it was my grandparents' place.

Jim Minnick, Director; This variance would only be for those two units, and not the rest of the rear yard that's if you choose to go that direction.

Commissioner Roben; I worry about an influx of people coming over and because variances were granted they are going to want permits to build closer to the property line.

Jim Minnick, Director; That is a good possibility.

Commissioner Roben; Not that I am leaning that way, but then you will have people building next to each other.

Briana Scherer, Applicant; No, I know what you are saying.

Cecilia Vogel, Representative; But I think when they come apply for a permit they will know about the five (5) foot set back, so they won't build in that setback.

Chairman Schaffner; I entertain a motion.

Vice-chairman Kalin; I make a motion in favor of project seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes).

Jim Minnick, Director; Stated **Agenda Item #4** stands approved by this Commission. In which the applicant or any member from the public want to appeal must done by filing the appropriate appeal in the next ten (10) days.

5. Consideration of **Lot Line Adjustment #00329** as submitted by MFC IMPERIAL I, LLC, proposing to adjust the boundary line between two fields to the South approximately to the center of Dickerman Road. The project site is located at 2301 E. Chalupnik Road, Brawley, CA 92227. On property legally described as the E½, of Sec 17, and the S½, of SE¼ Sec 8 T13S R16E, SBBM; and the, in an unincorporated area of the County of Imperial, State of California. Assessor's Parcel Numbers 039-060-004-000 & 039-030-016-000, (Supervisorial District #4), [Evelia Jimenez, Planner II at (442) 265-1736, Extension 1747 or by email at ejimenez@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced **Evelia Jimenez**, Planner II, to read the project into the record.

Evelia Jimenez, Planner II; Read the PowerPoint Presentation of the project into the record.

Chairman Schaffner; Asked if there was a representative for the project to approach the podium.

Brent Brissel, Representative; Introduced himself and commented, I think the aerial photo actually showed it best, we would like the boundaries of the legal parcels, to match up with the ways the fields are approved and farmed in the filed today so that they are not severed by the parcel boundaries. Just a clean up matter for us.

Chairman Schaffner; Asked if he had read the entire project and agreed with everything.

Brent Brissel, Representative; Yes, I have.

Chairman Schaffner; Any other questions or comments?

Brent Brissel, Representative; No thank you.

Chairman Schaffner; Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Vice-chairman Kalin: Made a motion in favor of project seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes).

Jim Minnick, Director; Stated **Agenda Item #5** stands approved by this Commission. In which the applicant or any member from the public want to appeal must done by filing the appropriate appeal in the next ten (10) days.

6. Consideration of **Conditional Use Permit #22-0023 and Initial Study #22-0041** as submitted by Desert Milling Inc., is proposing an olive processing operation within an existing and permitted metal structure for producing locally sourced olive oil. The property is legally described as Parcel B of Lot Line Adjustment 264, also being a Portion of the East Half & a Portion of the Southwest Quarter of Section 32 & Southwest Quarter of Section 33, T12S, R12E, Northeasterly of Hwy 86 400.4 AC, S.B.B.M. in an Unincorporated Area of the County of Imperial, State of California, Assessor's Parcel Numbers 019-170-033-000, (5800 Hwy 86, Westmorland, CA 92281, and; Supervisorial District #4), [Derek Newland, Planner II at (442) 265-1736, extension 1756 or by email at dereknewland@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced **Derek Newland, Planner II**, to read the project into the record.

Derek Newland, Planner II; Read the PowerPoint Presentation of the project into the record.

Chairman Schaffner; Asked if there was a representative for the project to approach the podium.

Rick Benson, Applicant; Introduced himself.

Chairman Schaffner; Asked if he had any questions or comments regarding the project, and if he read and agreed with everything.

Rick Benson, Applicant; Yes, I would ask for two clarifications on the report. I actually asked the planner and he said I needed to bring this before you all. Under the project description, S-1 it says that it authorizes the permittee, me, to operate an olive oil mill to convert up to twenty (20) tons per day; That's per twelve (12) hour shift. So, I would like during maximum harvest to be able to cap at forty (40) tons not at twenty (20). My equipment, is capped at about three (3) tons an hour, so you know if I operate 24 hours, I might be able to go to (40) or (45).

Chairman Schaffner; Mr. Minnick, why do we care about that?

Jim Minnick, Director; We don't, but that is what was asked for. If you want to make it forty (40) that is up to you.

Rick Benson, Applicant; They asked me, how much I expected to process every day. They didn't say it was a cap. So here in the agreement it reads as a cap and I didn't want there to be one.

Jim Minnick, Director; And it is a cap, let me be clear about that. The ask was for twenty (20) we have no objection for forty (40) but that would be a change in the project description.

Commissioner Cabanas; Okay, so you say forty (40) or forty-five (45) so which one is it.

Rick Benson, Applicant; Okay, so if we are going to go flat out, I want to mill as much as I can and as fast as I can because the way that the olives work is I don't have much control over ripening and we have a fairly large concentration of a few varieties and if they all come at the same time we are going to go like crazy 24/7 for two weeks. And I have the lighting set up and everything for safety matters; but it is not that one guy or two guys running the mill, or thousands of people; It is just that they are going to be there and I will have to do double shift and work as fast as I can because you need to get the oil when it is optimal.

Chairman Schaffner; We are typically concerned with truck loads per day or something like that. This is a very small operation and it is agriculture and there is no way you will ever know how much you are doing in one day.

Rick Benson, Applicant; Twenty (20) tons is one truck, so it would be two (2) trucks instead of one.

Jim Minnick, Director; Well everything kind of dominos together right. It is now much truck traffic, it is now much noise, light, glare and all those elements together. Just like if we are going to do a Hay storage or Hay compressing. You have to have some form of a measure, that is why it is a it is a discretionary permit. If it was a by right permit, then you are right, there is no constraint.

Chairman Schaffner; So, you are good with one hundred (100) tons.

Rick Benson, Applicant; Sure. I don't know that I will ever cap that but that is fair.

Chairman Schaffner; Well, I mean that wouldn't be that many more truck loads. I mean it is not out of the realm of.

Rick Benson, Applicant; Yeah, that would be great.

Jim Minnick, Director; Well, if we are going from some logical basis, if he is saying, that he could do three (3) tons an hour that is seventy-two thousand (72,000) tons, not one hundred thousand (100,000). But if you are going to have more than one machine;

Chairman Schaffner; Yeah, if you start expanding, then they are going to be like "What is reasonable"?

Rick Benson, Applicant; Well, if you want to say above one-hundred (100) tons requires me to come back here, that is fine.

Chairman Schaffner; Well, I just don't want you coming back here for an increment or something like that. It's expensive.

Commissioner Roben; I mean if he is doing forty (40) and ends up doing forty-one (41) how do we know?

Jim Minnick, Director; Yeah, and we can require him to report back to us.

Rick Benson, Applicant; And technically I could bring in more than twenty (20) tons on a truck because it is all within 100 miles and there is no DOT limit.

Jim Minnick, Director; Then maybe I should recommend denial.

Chairman Schaffner; Well, then what is a good number to get this going?

Rick Benson, Applicant; I would be fine if you'd say convert up to (100) tons because I am always going to be below that number.

Chairman Schaffner; But seventy-five (75) would work?

Rick Benson, Applicant; Sure.

Rick Benson, Applicant; There is one other amendment I would like to ask for. Under S-2 hours of operation, the olive mill operation will be running from August to January at up to 24 hours a day but, I will have people there year round because that is where I will be bottling my oil. It is a food grade processing facility; I am getting certified. So, I will have employees at site during work hours year round. And then during harvest you might go twenty-four (24). And I didn't think that it read very clearly that way. I just want to be sure that I can have somebody there in July. The way it reads, I am not allowed to have anybody on site from February to July; and I mean this is a normal workplace.

Commissioner Bergh; Why can't you just delete the part "during harvesting season".

Jim Minnick, Director; Again, the basis on the hours of operation are what the applicant put in there on the project description which is what was environmentally assessed. So if they want to do something different then apparently,

Rick Benson, Applicant; It is just not exactly the way I wrote it, that is all.

Chairman Schaffner; Well, if you have somebody there bottling it is not going to be as intense of an operation as coming in there and squeezing and hauling and all that. So, how would you word that?

Rick Benson, Applicant; Year round operations with twenty-four (24) hours during harvest. I'm fine with that. Year round employment.

Commissioner Cabanas; Jim, is that okay?

Jim Minnick, Director; Yes.

Rick Benson, Applicant; Plus it is in the middle of a farm; so, I mean we have people there. In that location we actually do harvest at night starting in July/ August. I am also the farm manager for that.

Jim Minnick, Director; Okay, so twenty-four hours a day during harvest season which is from August to January, and the rest of the time during bottling time, seven (7) to seven (7). Please note that your noise decibel level can not exceed seventy (70) which is per the General Plan Noise Element, at any given time regardless of the time of the day.

Chairman Schaffner; Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Vice-chairman Kalin; Made a motion in favor of project with the two (2) condition changes; To seventy-five (75) tons per day and then the hours of operation. Seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes).

Jim Minnick, Director; Stated **Agenda Item #6** stands approved by this Commission. In which the applicant or any member from the public want to appeal must done by filing the appropriate appeal in the next ten (10) days.

7. Consideration of **Conditional Use Permit #22-0020 IS#22-0034** as submitted by Hudson Ranch I, LLC. The proposed project proposes to drill a new geothermal production well (13-4) in the Hudson Ranch Unit of the Salton Sea Known Geothermal Resource Area (KGRA) to continue resource development and maximize plant output for the existing facility. The property is legally described as the Northeast Quarter, of the South Half, of Section 13, T11S, R13E, SBBM, in an unincorporated area of the County of Imperial, State of California, (Supervisory District #4) [David Black, Project Planner at 442-265-1736, extension 1746 or by email at davidblack@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced **David Black**, Planner IV, to read the project into the record.

David Black, Planner IV; Read the PowerPoint Presentation of the project into the record.

David Black, Planner IV; I have the applicant here, to help answer any questions and the Consultant Tim Gnibus with HDR who helped prepared the initial study for this project.

Chairman Schaffner; Asked if there was a representative for the project to approach the podium.

Joe Bannon, Applicant; Introduced himself.

Chairman Schaffner; Have you read the project and agree with everything in it?

Joe Bannon, Applicant; Yes, I have read it and do agree.

Chairman Schaffner; Any questions or comments?

Joe Bannon, Applicant; No.

Chairman Schaffner; Opened the public portion of the meeting.

Fernanda Vega, Public Speaker; Good Morning, I am from Westmorland and I come representing Comite Civico del Valle and my concerns were with the report that was submitted. The impact on fresh water supply is significant and it is not being taken in consideration. The cumulative impact on water supply with construction and operation with the Atlis project at the same time. The other one was the potential spills of hazardous materials. The hazardous spills are not analyzed correctly or even analyzed at all in the report. And the cumulative impact on air quality will be significant and the construction of the project will likely occur at the same time with the construction of the Atlis project. As well with other Lithium companies around, like CTR and Hell's Kitchen. Not to mention that the air quality situation emissions is trying to get offset by comparing to an old form of extraction which is fossil fuel burning; that you can find on page 31 of the report. Thank you.

Chairman Schaffner; Do you have any response to that?

Joe Bannon, Applicant; Having read the comments, related to hazardous wastes references another facility, CalEnergy; I can not speak to CalEnergy's practices, but I can tell you that at Hudson Ranch we train our employees about how to properly handle hazardous materials, non-hazardous materials, how to properly respond, we maintain our hazardous materials business plan, our emergency response plans and provide the training and tools they need. In fact, when I mentioned I am from Salt Lake City, that is where the corporate office is. One of the practices employed at Hudson Ranch is we have adopted at our other sites; in Nevada, New Mexico, Utah as a best management practice. So, I am confident, I can make you no promise, that nothing will ever happen, but, I can tell you we provide our people the proper training and equipment to minimize our impacts, and our record I think speaks for itself.

Commissioner Cabanas; I have a question. So, I am pretty sure we will contract with a company that is available to respond in case something like that were to happen that will mitigate those spills, pick up the materials, transport them, dispose of them properly and do the laboratory analysis for the profiles, correct.

Joe Bannon, Applicant; Absolutely.

Vice-chairman Kalin; On water use, would you speak to that.

Joe Bannon, Applicant; I would like to ask if I could for a little assistance from the consultant on that.

Vice-chairman Kalin; I can help you, it's about three thousand acre feet per year, that's about eight acre feet a day. That's nothing. Normal farming would be more than that. It is insignificant.

Jurg Heuberger, Representative for Atlis Project; Let's make sure that we understand something. This is not the Atlis project. It is the Hudson Ranch drilling a new well. The Atlis project which you have already approved which will go under construction later this year, has a commitment of thirty-four hundred acre feet for the Atlis project which is the mineral extraction project and has nothing to do with this well. This is just drilling a new well for the power plant. So the Atlis project is not involved in this project. Joe Bannon and his company are not going to use thirty-four hundred acre feet.

Vice-chairman Kalin; I will go ahead and correct my statement. In the comments, I believe they referred to two hundred and thirty thousand acre feet over (32) years, that's (3,750) acre feet per year divide that by 365 and that is ten (10) acre feet per year, so I am sorry I has off by two acre feet. And thanks for the clarification.

Jurg Heuberger, Representative for Atlis Project; And again this is for the well, this has nothing to do with the Atlis project.

Chairman Schaffner; Any other comments?

Daniela Flores, Public Speaker; Executive Organized for Imperial Valley Equity and Justice Coalition, we are here with similar concerns, environmental concerns. I just attended a community health needs assessment meeting put on by the Public Health Department on Monday and we learned about the great disparities that we are experiencing in our community as it is being looked at with this great potential for a new industry regarding the lithium development. We are hearing today a project that is in the Salton Sea area known to have extreme value potentially in the next several decades. So, it is really a matter of continuing to hold the position of Planning Commissioner to keep the communities wellness at the forefront. Just sitting here as a resident, really just seeing how friendly the dialogue is with parties that will be not really removing some of the environmental injustices that we live with, but actually adding to it. So, when you laugh it off and say it is not significant, it is. And there are people in this community that have to drink canal water pretty much because the water quality act standards are not up to date for certain homes, for certain water sources, for many people. I believe it is around 3,000 people impacted here. You know they have to get water, buy water, because there are environmental impacts to their babies getting rashes. These are real-life experiences from people that are living the impact of polluted canal water that ends up being one of their main water sources. So, when we think about the impact of water and air, when we already have one of the highest emergency department visits for children with asthma. So, when you say it is not significant I say that it is; and it is because our community members are the ones that bear that burden in their bodies, in their lungs, and in the air they breathe every day. For the water impact it is proposed that 50,000 gallons of water per day for sixty (60) days for drilling, and then 10,000 gallons of water per day for forty (40) days for construction. Also, the study finds that it is also not as significant because it is temporary. However, all of that is significant and again stating existing conditions of those disparities that we continue to find as we look through the data of the impacts of the environment and our physical well being giving a heavily favorable policy with the agricultural industry with industry in other spaces. I recognize that there are advantages to geothermal energy and I understand what is going on here. But I just wanted to say it is the responsibility of the Planning Commissioners to take the health of the residents at the forefront and carefully consider that. With that and along with Comite Civico del Valle, and others partners in the mining advocacy industry, we urge you that this project essentially goes through additional investigation. I think it is premature to just approve this project with the discrepancies that were found by scientists that reviewed this initial study.

Commissioner Cabanas; I have a question for you, are you talking about more studies for drilling a well or for the project.

Daniela Flores, Public Speaker; I am talking about the project which is in discussion today.

Commissioner Cabanas; We are not talking about the project today, we are talking about drilling one well.

Daniela Flores, Public Speaker; Whatever the study is looking into that's what my comments are about; the statistics that I am looking at the impacts and quite honestly I don't think I am understanding your question.

Commissioner Cabanas; Do you want to clarify that sir.

Joe Bannon, Applicant; What I will say is, I appreciate the concerns that have been raised but I also believe we have complied with the requirements, the CEQA process, and the conclusions have said, no significant impacts with some mitigations. And we are willing to follow those mitigations during the process.

Commission Cabanas; Of the drilling of well not the project.

Joe Bannon, Applicant; Of the drilling of the well, right.

Daniela Flores, Public Speaker; But the drilling of the well is what leads to those fifty thousand gallons right? The drilling to make the well.

Joe Bannon, Applicant; Yes.

Daniela Flores, Public Speaker; Ok, so I don't know what the question is. My concerns are about the project that is being discussed, regarding the drilling for the well. I am not trying to make conclusions about future projects or future developments.

Commission Cabanas; That is why I asked you, because there was a confusion before about when they were bringing the Atlis project.

Daniela Flores, Public Speaker; Oh, but I didn't bring up the Atlis project.

Commission Cabanas; I just wanted to make sure which one you were talking about.

Daniela Flores, Public Speaker; To your comment, I think it does warrant, I am not sure about the regulations but as a region I know that right now we are looking into a baseline report for the lithium development. And I think it is very important for us to take a holistic and comprehensive view of all of the separate projects; the well, the plant etc., I mean it is a cumulative impact. And I know that these are considered separately but as Planning Commissioners with the charge to hold the health and safety of our community at the front, it's really important to look at it holistically. Thank you.

Vice-chairman Kalin: Made a motion in favor of project seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes).

Jim Minnick, Director; Stated **Agenda Item #7** stands approved by this Commission. In which the applicant or any member from the public want to appeal must done by filing the appropriate appeal in the next ten (10) days.

8. Consideration **Conditional Use Permit #23-0002 IS#23-0003** as submitted by IID. The proposed project includes converting four (4) test wells into water supply wells for irrigation of vegetation-based dust control. Construction activities associated with the completion of the test wells were permitted under separate approved construction permits for testing purposes only. The total amount of acre-feet of water per year is 63-acre feet for the four (4) wells. The proposed IID water well Project site comprises approximately 254 acres and is located

at 2902 Crystal Lake Ave. Salton City. The NE¼ of the NE1/4 of the NW1/4 and the NE ¼ of the SE1/4 of Section 5, T10S R10 APN: 008-010-006-000. (Supervisory District #4) [David Black, Project Planner at 442-265-1736, extension 46 or by email at davidblack@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced **David Black**, Planner IV, to read the project into the record.

David Black, Planner IV; Read the PowerPoint Presentation of the project into the record.

David Black, Planner IV; I have the applicant here, Victoria Quinn and Jessica Humes she was the environmental project manager for IID.

Jessica Humes, Applicant; Introduced herself.

Commissioner Cabanas; Have you read the project and agree with everything in it?

Jessica Humes, Applicant; Yes, I have and agree.

Chairman Schaffner; Do you have any questions or comments you would like to make?

Jessica Humes, Applicant; I just wanted to add that this project is part of our Salton Sea Air Quality Mitigation Program, so this will help control dust on the West side of the Salton Sea and the Salton City area. By operating these wells we will be establishing Allenrolfea, which is a plant as David mentioned. And we plan to control one hundred and twenty eight (128) acres of exposed playa that is potentially emissive by operating these wells. That is all I have.

Chairman Schaffner; Do you have a photograph of this plant?

Jessica Humes, Applicant; I do not.

Chairman Schaffner; Ok, I was just wondering which one it is, I know that there are a few tall one out there.

Chairman Schaffner; Opened the public portion of the meeting.

Norma, Public Speaker; Introduced herself. I have a quick question. How does this project impact people that own property there? Because I keep hearing that you guys are going to be doing a well, so does that mean it is going to run through certain areas? Will I now be able to get into my property, which is vacant at the moment but I am not understanding how the project impacts property owners.

Jessica Humes, Applicant; If we can pull up the map back up. The four wells are located out on the playa. They are in an area that the closest cross street is Heren Ave., and Crystal Lake Ave., but no pipelines will be going through any residential areas. All the wells will have pipelines on the playa to a central compound which will have a series of tanks. The tanks will be filled using a solar pump at each well. These will only operate during the day and we will have a series of irrigation systems out at the playa; mostly drip irrigation to establish vegetation. But nothing will be going through the residential area in Salton City.

Commissioner Cabanas; Does IID own this land?

Jessica Humes, Applicant; Yes.

Norma, Public Speaker; Okay, that was my question, thank you.

Chairman Schaffner; Any other comments from the public? There were no additional public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Vice-chairman Kalin: Made a motion in favor of project seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes).

Jim Minnick, Director; Stated **Agenda Item #8** stands approved by this Commission. In which the applicant or any member from the public want to appeal must done by filing the appropriate appeal in the next ten (10) days.

- 9a.** Consideration of **Water Supply Assessment (WSA)** as submitted by APEX Energy Solutions, LLC proposing a Water Supply Assessment for the VEGA SES 4 SOLAR ENERGY project. This Water Supply Assessment has determined that IID has adequate polices, programs and project in place to provide water to agricultural, commercial, industrial and municipal users in the Imperial Unit. Adequate supply is currently available during normal water years. The foreseeable planned demands for the sources of water for the Project have been noted in this Water Supply Assessment. The proposed Project site is located on two parcels (APNs 059-300-015 & 059-300-017-000). The project is located east of the City of Calexico, south of All American Canal along Mexico US border. (Supervisor District #1) [David Black, Planner IV at (442) 265-1736, extension 1746 or via email at davidblack@co.imperial.ca.us]
- 9b.** Consideration of Final Environmental Impact Report (FEIR 2021050018) and Findings, Consideration of the VEGA SES 4 SOLAR ENERGY project Environmental Impact Report (FEIR) that includes reviews of WSA, Mitigation Monitoring & Reporting (MM&RP) Program, CUP, and lot ties. The project proposes to generate approximately 100 MWs of solar and up to 200 MW of battery storage. The proposed Project site is located on two parcels (APNs 059-300-015 & 059-300-017-000). The project is located east of the City of Calexico, south of All American Canal on approximately 531 privately owned lands (Supervisor District 1) [David Black, Planner IV at (442) 265-1736, extension 1746 or via email at davidblack@co.imperial.ca.us]
- 9c.** Consideration of Mitigation Monitoring & Reporting Program (MM&RP), for the VEGA SES 4 SOLAR ENERGY project. A mitigation monitoring and reporting program for mitigation measures that have been incorporated into or imposed upon the project to reduce or avoid significant effects on the environment (CCR §15097). This program will be designed to ensure that these measures are carried out during project construction and operation. The proposed Project site is located on two parcels. (APNs 059-300-015 & 059-300-017-000). The project is located east of the City of Calexico, south of All American Canal on approximately 531 privately owned lands. (Supervisor District #1) [David Black, Planner IV at (442) 265-1736, extension 1746 or via email at davidblack@co.imperial.ca.us]
- 9d.** Consideration of Conditional Use Permit (CUP) #20-0020 for the Vega SES 4 solar energy Project, which is an approximately 100 MW solar generation (PV) and up to 200 MW battery storage facility on approximately 531 acres located on two parcels. (APNs 059-300-015 & 059-300-017-000). The project is located east of the City of Calexico, south of All American Canal on approximately 531 privately owned lands (Supervisor District #1) [David Black, Planner IV at (442) 265-1736, extension 1746 or via email at davidblack@co.imperial.ca.us]

Jim Minnick, Director; Gave a brief description of the project, and introduced **David Black**, Planner IV, to read the project into the record.

David Black, Planner IV; Read the PowerPoint Presentation of the project into the record. I will be presenting a couple of slides and then have Tim Gnibus with HDR talk about the EIR.

Tim Gnibus, Consultant; Introduced himself. I will just take a few minutes to review the CEQA process. An Environmental Impact Report was prepared for this project. The notice of Preparation was and public scoping occurred in May /June of 2021. Through that process, we developed the scope of the EIR. The draft EIR went out for public review on November 20, 2022. That public review period extended to January 10th 2023 and we received one comment as part of that public review process and that was from Caltrans. With that, this next slide lists environmental topics that were addressed in the EIR. Several of those items were determined to be significant but mitigated to a level "less than significant" with mitigation measures and then the remaining topics were less than significant. You know, your typical air quality, dust control measures, biological resources monitoring, cultural resources monitoring, water quality and so forth. Mr. Black went through the primary components of the project. Those were all addressed in the Environmental Impact Report including the solar energy facility, the battery storage system, and the gen-tie line and then also, access to the project site. With respect to the construction, it is not expected to exceed (150) workers at any one time. Operations and Maintenance, you are probably familiar at this point: no full-time operational employees, the facility will be monitored remotely. The project is located in the existing Overlay Zone so no general plan amendment or re-zone is proposed as part of the project. Just a few notes, when the applicant came in, the site plan had a little bit more coverage on the PV panels on the site and through a biological recon survey of the site, there were some sensitive vegetation communities that were mapped and is determined to basically re-design the project and avoid those sensitive communities. Project morphed a little bit, it's overall footprint and impact was reduced as part of the environmental review process. The re-design reduced the original project site to 531 acres to 450 acres. Another component of the project is the access. The draft EIR analyzed a heavy construction equipment /vehicle access route via Gordon Wells Road and I will let the applicant get in some of the details if necessary; but there are constraints. There is a bridge at that location that is weight restricted basically right across from the site. That is going to be proposed for employees to walk across for construction. However, heavy vehicles can not be brought over across the bridge, so an alternative access route has been in the works, through this process. Trying to find the most viable, feasible route. As analyzed in the draft EIR it was proposed through Gordon Wells Road. There are some constraints there that requires crossing the All American Canal via two existing bridges with BLM and Border Patrol approvals. So, through the conversations the applicant has been having with the BLM and the Border Patrol for approvals, a second access route was identified via Grays Wells road, this wasn't originally analyzed in the Draft EIR, however we have taken that access and analyzed it and determined that it does not result in a new significant impact or increase in impact that wasn't already addressed in the EIR. This access road, provides more of a direct connection with the via I-8 and utilizes a paved frontend road from the East all American canal to the I-8 rest stop in BLM desert office. It will also require BLM and Border Patrol approvals and clearance. This figure shows the alternative access route. Basically the red line was the road that was originally analyzed in the draft EIR, the orange area shows the new access location, which is already paved and so then, there is a segment there, a little gap that would need clearance from BLM and some improvement to be able to move equipment. We went through the environmental impact report and determined that an Errata for that change was appropriate; and that is part of the materials in front of you today for consideration. I am available for any questions.

David Black, Planner IV; Presented the staff's recommendations.

Chairman Schaffner; Do we have the applicant here, please approach the podium.

Jurg Heuberger, Applicant; Introduced himself. To answer your question, we agree with most of it but we do not agree with all of it. So we have a couple comments. Let me make an additional comment to Tim's discussion about the access. As you can see this site is on the South side of the All American Canal right next to the international boundary and access to it is extremely difficult. We can walk across the bridge that is near the project but we can not drive anything heavy across there. So, some of these loads are close to two-hundred

thousand pounds; most of the county bridges as you know are marginal at best at that level so we ended up going to this long ordeal of first getting approval from homeland security, who initially said yes; You can use our road as long as you don't touch the road in any way, shape or form other than drive on it, unless you damage it. So no adding, no fixing, no anything unless we say so. Then we found out that it was ok, except that BLM says No, that is our road, and you have to go through our process to get permission when using that road, even though Homeland Security says, yes. But you still need Homeland's security approval also. Then we found a Bureau Reclamation that had a bridge, it said, that is our bridge. So, as you can see I have just given you the background. This project is not that easy. Having said that, we agree with most of the conditions, the problem we are having is the Board of Supervisors passed some new rules on May 9, 2023, I do not know to what extent the Commission is familiar to those rules, but it basically says that after May 9th the projects are subject to new public benefit requirements. Anything approved before that have a different standard. So the new regulations as we understand them, is six hundred (600) dollars per acre per year of public benefit. Which as we were told and this didn't come from Jim's office, but that would negate all these other requirements; like the sheriffs request you have under condition S-28. Again, I understand that Jim's office can not take that out because that is a request from the sheriffs. So, we are asking that if in fact we are under these new regulations, six hundred (600) dollars per acre per year for the life of the project that the Sheriffs condition S-28 be deleted because that adds to it. The other thing that you need to understand is that this project was tied to the Viking project, for which we already agreed to buy a fire engine and a road grader for these projects. So, in addition to the six hundred per acre we are also spending a million three roughly for two pieces of equipment for the county. Just so that you know. Therefore we are asking that condition to be removed because that would add another almost a million dollars to it. Let me give you the difference, if these numbers are correct, under the old regulations are these so called modified regulations; this project would have an impact of roughly 2.4 million dollars in impact fees. Under these new regulations it is five million dollars. Double of what the impact fee were prior to May 9th. So just so you guys understand, things changed radically on May 9th in terms of how this project is impacted financially. We would also like condition S-27 items 1, 2, 3 removed because they would no longer apply. We already paid for a fiscal impact analysis. This condition says we will be billed for it, but we already paid for it. So, it seems to be a duplication at best redundant. And again these are not directed at Dave or Jim because they don't make these rules.

Rosa Lopez, County Executive Office; Introduced herself. So, for clarification purposes, yes, the Board of Supervisors on May the 9th revamped what we are now calling the Public service program instead of the public benefit program. Which will definitely provide direct funding to our county departments. And for clarification purposes it is six hundred dollars per acre for the entirety of the project for the first year. And then after the first year, it will also include a CPI (consumer Price Index adjustment). In regards to existing S-28 Conditions if it includes some of the local departments, then yes, that will be taken out. I do not however recommend taking out S-27 and some of the other items; I will go back and look at them because that is just a formality of the fiscal analysis. Yes, the applicant has done the fiscal analysis but that I believe is just a formality that needs to remain. I will go back and take a look at the other items that he brought up and make adjustments as needed but not take them out entirely. The applicant also has a, sales tax and this goes for many projects of this size, not just renewable energy projects but a sales tax condition, where by identifying the County of Imperial as a point of sale, so that the County maintains that sales tax rather than wherever the materials are actually being purchased which is allowable by the state of California. And just going back to the six hundred dollar per acre feet per year, all the individual items such as Ag fee, community benefit fee, in addition to any credits that some applicants request are void. I believe that in summary that is what the Board approved earlier this month.

Jurg Heuberger, Applicant; Mr. Chairman, we are not asking and I appreciate Rosa's comments relative to the sales tax, however we are not asking for any of that to be modified; we understand that condition. We are fine with that part of it. What we are concerned with, is item I number one under S-27, again, it refers to a fiscal impact analysis which we will be billed for, and we have already paid for that. We haven't seen the report.

Rosa Lopez, County Executive Office; It will be provided. But that is just standard Board approved language that needs to remain.

Jurg Heuberger, Applicant; But it just confuses the CUP down the line; because these projects are taking over by developers and the first thing they read is, well we are going to get another bill. We have already paid that bill, why does it have to be in there again. Take it out, it's a done deal. The report is done as I understand it. I haven't seen it but it is done, number one. Number two, the item says, "a public benefit agreement will include detailed conditions and measures related to the Fire Department and Sheriffs Department, and other county departments," Rosa, just explained to you that the six hundred dollars negates all of that, there are no more impacts so, why have it in there? It just confuses people. And the third item, "the public benefit agreement may include both agricultural benefit fees and community benefit fees," once again the six hundred dollars wipes all that; it is confusing. It is confusing to my applicant, it is confusing to the people who buy these projects.

Rosa Lopez, County Executive Office; Mr. Heuberger, as mentioned, I will go back and provide clarification to both Mr. Black and Mr. Minnick, on the language. I think you have stated that before, that there is confusion, but I will go back and correct the language that will reflect the six hundred dollar plus CPI fee. That will be reflected in the final CUP.

Chairman Schaffner; So, where does that leave us today?

Vice-Chairman Kalin; So, you are agreeing to delete these?

Rosa Lopez, County Executive Office; That is correct. The individual items yes.

Chairman Schaffner; So, you are going to do it later? Or are we going to do this now?

Jurg Heuberger, Applicant; No, we want it done now.

Rosa Lopez, County Executive Office; I will have it to the Planning Department by the end of today yes.

Commissioner Cabanas; Yes, but we have to approve this.

Jim Minnick, Director; You have to make a recommendation.

Rosa Lopez, County Executive Office; I will read the language that the Board of Supervisors, approved on May 9th. You are asking me to establish language right now that I have committed to providing and the developer, will receive the final language prior to the finalization of the CUP. I don't know, Jim is that something you would be okay with?

Jim Minnick, Director; Um, ultimately it is up to them. But let's take a step back, under S-3 for agriculture, we have included a statement that says, "the applicant voluntarily will enter a public benefit agreement at an annual cost for the public benefit of six hundred dollars per acre. Number two, costs associated with the per acre fee will be annually adjusted on January 1st to add a consumer price index increase as determined by the United States Bureau of labor statistics, but in no case should be less than zero". So, what we could do is replicate that same language and put it in where Mr. Heuberger is asking for removal. In terms of S-27 1, 2 and 3, I concur that number one is basically just a bill that we already mention in G-1, which says you need to pay all fees and bills and which is redundant. As to S-27 item 2 and 3, I recommend we remove that and replace it with the same language that is shown in S-3; either say reference S-3 or duplicate it. That should solve Mr. Heuberger's concern. As for S-28, I am not quite sure I am understanding it. I am not opposed to removing it, but not sure how it accounts to one million dollars as Mr. Heuberger stated, for a vehicle. But that vehicle should have been included in the six hundred, correct.

Rosa Lopez, County Executive Office; Correct.

Jim Minnick, Director; So, removing the vehicle reimbursement, cameras, and license plate identifiers, and the last one is a drum, so all of this should be included under the six hundred acre requirement. So, I see no reason to keep S-28, unless there is a contrary. If the Planning Commission needs something today, then I will concur with the removal of S-28 and changes to S-27 to replicate what is in S-3. I would be satisfied with that. However, should the CEO's office want to make any additional changes they have that right at the Board of Supervisors, regardless of what the Planning Commission determines today. Or we continue the project.

Jurg Heuberger, Applicant; I don't want to continue the project. We recognize this goes to the Board, we are simply asking for the commission to make a recommendation; and I'll agree with Jim's proposal, which delete S-28, delete S-27 1, 2 and 3 and leave the language under S-3. We haven't objected to the six hundred, okay that is an issue between the Board, obviously because you folks do not have that authority. So it would be pointless to argue the six hundred. But I do want to point out, because this commission needs to understand what these impacts are. When these rules are passed, like I just said, under this particular project under the old regulations and assuming, if these 548 acres were farmed we would pay two thousand dollars per acre, one time, for statewide significant land mitigation. Under that scenario we would be paying 2.4 million dollars. Under the new rules we are paying 5 million dollars. If we applied the old rules, because this land hasn't been farmed in ten years, it would be zero.

Rosa Lopez, County Executive Office; Mr. Heuberger, could you explain where you get the five million dollars from.

Jurg Heuberger, Applicant; It is taking your six hundred dollars per acre, for the life of the project. But under the old regulations is would be a one time payment for Ag mitigation.

Rosa Lopez, County Executive Office; You are overlooking community benefit. So, yes that is correct Mr. Heuberger, for farming it was one time five thousand per acre for prime. Two thousand for statewide importance, one time. For community benefit, it was one hundred and fifty (150) per megawatt for the life of the project. Not just for the first fifteen years or twenty years but for the life of the project. Actually that was one hundred and fifty from years 1-10 and then years 11 for the rest of the life of the project it is two hundred per megawatt. I don't have the calculations under the old system for this particular project, but yes, the way the six hundred per acre, it is about mid three hundred thousand right not for this particular project, which again will need to be paid prior to the grading permit and then thereafter, we would include the consumer price index, which I believe is currently at five percent.

Jurg Heuberger, Applicant; Yeah, my comparison is for the life of the project. And Rosa's statement is correct, we calculated at two thousand per acre for the statewide significance because there is no prime in this particular project, and we calculated one through ten at (150) and ten through thirty at (200) and that equates to 2.4 million.

Commissioner Roben; Is there not a calculation for land that has not even been farmed?

Jurg Heuberger, Applicant; Well I am saying if you calculate it under the old fees, the two thousand or five thousand would not apply if you could show that it has not been farmed. We are not even arguing that, we are saying , okays let's say it has been farmed, we will pay the 2.4 million. But again this is a discussion on the money part with the Board, I just want the commission to understand what kind of impacts are being created that seem to just be looked over. When you double the cost impacts for a project, at the end of the project, and this is what upsets the applicants most. This application, as Tim pointed out was filed what, a year and a half ago? And we are operating under these rules, and then on May 9th, the rules completely change. Mr. Roben,

you are in construction, how would you like it if Mr. Minnick here, tells you after you have gone through plan check and you are in the middle of construction, oh by the way, the rules have changed.

Commissioner Roben; It would not be nice.

Jurg Heuberger, Applicant; Yeah, exactly. So, again, had the rules said, that any project applied for, after this date faces these rules that would make a lot more sense because then a developer can say, well, wait a minute it no longer pencils out, I am not going to spend two / three hundred thousand dollars going through the process. But here, we have already paid for the process, Jim's office has spent an inordinate amount of time and money, the applicant has, and at the very last minute, "oh sorry it is not two million, it is now five million" or whatever the numbers are.

Rosa Lopez, County Executive Office; Mr. Minnick would the applicant be able to go before the Board when this is approved to express his concerns and possibly request to go under the prior rules?

Jurg Heuberger, Applicant; Don't worry Rosa, we will. I will guarantee you we will. But the point is I want this commission to understand, when they approve a project there are impacts that I don't think most of you were familiar with.

Commissioner Roben; We don't see any of this stuff.

Jurg Heuberger, Applicant; Anyway, not personal Rosa, you know me better than that.

Chairman Schaffner; Nor do we get to spend the impact fees.

Commissioner Cabanas; So, Mr. Heuberger, are you okay with the changes Mr. Minnick proposed?

Jurg Heuberger, Applicant; I am Okay with the changes which is remove S-28, modify S-27 and then we will fight the other battles down the road.

Vice-Chairman Kalin; I need a little more clarification, I am sorry, the property that you are proposing to put this project on, hasn't been farmed in ten years; if it were on BLM land that had never been farmed, assuming you could have got the permit with the BLM to do all of that, would it be the same? If it were across the other side of the All American Canal, in a currently farmed, decent farmland, what would the fee be?

Vice-Chairman Kalin; It would be two thousand or fifteen hundred rather than six hundred dollars an acre a year.

Jurg Heuberger, Applicant; If it is on farm land it is either five thousand or two thousand, one time fee.

Vice-Chairman Kalin; Does that condition still exist today?

Jim Minnick, Director; It has been replaced by the new fee of six hundred dollars per acre. So, what the Board of Supervisors did was a lot of consolidation.

Vice-Chairman Kalin; I understand, but that is not my question. My question is, so if you were to do it on farmland today, it would still cost the six hundred an acre?

Jurg Heuberger, Applicant; Yes.

Vice-Chairman Kalin; Okay, alright.

Jurg Heuberger, Applicant; But let me ask you a question. You are a farmer, Mr. Schaffner is a farmer, under the old rules, the directive was, stay away from prime or good farmland because you are going to get hit with the substantial fee (five thousand or two thousand). Under the new rules it doesn't matter, you are paying six hundred dollars whether it is the worst land in the world, whether it is BLM ground, or anybody else's land, you have to pay six hundred an acre. So, what is the advantage of me staying away from Ag prime land?

Vice-Chairman Kalin; There is no advantage. The advantage is to go on prime land.

Jurg Heuberger, Applicant; Exactly. This rule makes no sense from that prospective. Because what you are basically saying now is, all land is the same whether it is up by the Salton Sea and it's alkaline or whether it is down here and it's some of the best land in the world. Unless I am reading this wrong, that is the way I understand this.

Vice-Chairman Kalin; That is how I see it.

Jurg Heuberger, Applicant; And again, this is not your commission, and we are kind of getting off target, but I wanted to make a point. And I have always been taught when I was in Jim's shoes, you have to create an administrative record. So, I am good with Jim's recommendation. And I personally want to thank David Black for bearing with me all this months.

Rosa Lopez, County Executive Office; Jim, I agree with Mr. Heuberger, but I would recommend leaving the FIA language; that is a formality of producing a fiscal impact analysis. Just like our office has done for the last whatever existing projects are. These projects are yes, sold to other investors, and when I reach out to them for annual fees we go over what has been paid and what hasn't including the fiscal analysis.

Jim Minnick, Director; So, let me ask you this question, the fiscal analysis has to be paid for before the CUP, right? And what you are saying is there is a chance that there is a new owner that buys the permit without having paid the bill. Is that what you are saying?

Rosa Lopez, County Executive Office; So, when that takes place, Jim you know that some projects are sold as an entirety. So when a new owner kicks in, and starts breaking it up in pieces and selling those pieces off, then that is when that particular item would apply.

Jurg Heuberger, Applicant; What item are you referring to?

Jim Minnick, Director; S-27 1.

Jurg Heuberger, Applicant; Which says pay a fee for a study that we have already done.

Jim Minnick, Director; Why don't we just change the condition to say "prior to the Board of Supervisors for determination this bill will be paid".

Jurg Heuberger, Applicant; How about we just take it out, since it is paid.

Jim Minnick, Director; I agree with you, I recommend taking it out.

Jurg Heuberger, Applicant; Jim, with all due respect, this is a recommendation from the commission to the Board, we understand that. We are asking this commission to take a stand and say, "take this stuff out" if the

Board wants to put the darn thing back in, let them. But I think the commission ought for once say, "this make no sense, get rid of it".

Jim Minnick, Director; And I recommend it. I am just trying to find a solution if we can have one.

Chairman Schaffner; I just wanted to make a comment, when this stuff was all starting with the solar, when we were trying to get them off Ag land, so we formed that committee, Carson and I represented Ag, from the Planning Commission and gave our input and then on the day that they finally gave their final vote on that, they pulled a shenanigan and sent us a different time for the voting than everybody else got. So we were excluded from the meeting. And we never forgot that.

Vice-Chairman Kalin; No, we never did.

Chairman Schaffner; We don't trust anybody anymore.

Commissioner Roben; I do agree with Mr. Heuberger on that, if the six hundred dollar will be the new fee then the other should be removed. It is duplication.

Jim Minnick, Director; We are all on board with that, even Ms. Rosa has agreed with that. The last sticking point was that I agreed the requirement of paying the fee because they are already required to pay the fee in terms of the assessment that was done. Basically, think about it as an EIR. You have to do an environmental document, we charge you for doing it. That is what this is, it was a fiscal analysis that was charged. And as Mr. Heuberger says, he has already paid. What I was trying to say when I said it should be removed, is that to me it is a fee that has to be paid no matter what, whether it is prior recordation or prior to Board. I was just throwing something out there. But it is a requirement that applicants pay all their fees due to the county before the county would issue a building permit.

Commissioner Roben; So, could you put under S-27-1 that this has already been paid by the applicant? His way is the best way; just take it out because it has already been paid, and you have confirmed it.

Rosa Lopez, County Executive Office; Jim, I would recommend and this is only on my record, we identified this has been paid however, should this project be divided up, that new ownership or new CUP's will be subject to because when you start subdividing FIA's are required. But that is my only concern that we maintain it just so when these projects are divided the know they will be subject to FEIA's. I agree with the commission and Mr. Heuberger that the fee has been paid but that is something we would like to keep on there should these projects be divided.

Jurg Heuberger, Applicant; We already have a condition in there that states we have to pay all fees, no matter who asks, when they ask and what is asks, it is condition G-3 or G-5 whatever it is.

Vice-Chairman Kalin; It is G condition not an S condition.

Jurg Heuberger, Applicant; Right, the applicant pays everything under the sun when the county says pay it. I wrote that condition.

Vice-Chairman Kalin; So, this is condition redundant.

Jurg Heuberger, Applicant; Yes, it is totally redundant, and Rosa is covered, because if we go in there with Jim and say oh, we want to make a change in the project and we incur costs to the county we will get a bill, guaranteed.

Jim Minnick, Director; This is what the condition says specifically, this is condition G-17, "Permittee shall pay any and all amounts determined by the County to defray any and all cost(s) for the review of reports, field investigations, monitoring, and other activities directly related to the enforcement/monitoring for compliance of this CUP, County Ordinance or any other applicable law. Any billing against this project, now or in the future, by the Planning & Development Services Department or any County Department for costs incurred as a result of this CUP, shall be billed through the Planning & Development Services Department", so that is what it says, would that be okay with you.

Rosa Lopez, County Executive Office; I will go back and check with our CEO. Yet I still recommend we maintain that language. I understand it may seem a little redundant but for my purposes and our office purposes, I think new buyers or potential new buyers appreciate details of what some of those costs are.

Commissioner Bergh; If we take the language out, the Supervisors will just put it back in. Okay so let's just do it that way. We are just making it too difficult.

Chairman Schaffner; Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Vice-chairman Kalin: Made a motion in favor of project (9a) seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes), Pacheco (no).

Vice-chairman Kalin: Made a motion in favor of project (9b) seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes), Pacheco (no).

Vice-chairman Kalin: Made a motion in favor of project (9c) seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes), Pacheco (no).

Vice-chairman Kalin: Made a motion in favor of project (9d) CUP20-0020 contention upon modification of conditions S-27, 1, 2 and 3 and S-28 be eliminated. seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Cabañas (yes), Bergh (yes), Medina (yes), Wright (yes), Pacheco (no).

Jurg Heuberger, Applicant; Thank you so much for you time I apologize for taking so much of it, but I thought it was important.

Jim Minnick, Director; Stated **Agenda Item #9a-9d** will be moved forward to the Board of Supervisors as modified. There is no appeal of this commission.

VI. Public Comments, NONE.

VII. Commissioner Comments, NONE.

VIII. Director Comments,

Chairman Schaffner; adjourned meeting.

IX. Adjournment: Meeting adjourned at 10:54 a.m.

Submitted by Rudy Schaffner
Chairman of the Planning Commission

Attest:

Jim Minnick, Director of
Imperial County Planning Commission

Valerie Grijalva & Melina Rizo PC Recording Clerks
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